

Message Text

CONFIDENTIAL

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ACTION MCT-01

INFO OCT-01 ARA-06 ISO-00 CIAE-00 DODE-00 PM-04 H-01
INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
USIA-06 IO-13 SY-05 DHA-02 /073 W
-----271849Z 065134 /65

R 271030Z JAN 77
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 9821
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

C O N F I D E N T I A L BRASILIA 0742

E.O. 11652: GDS
TAGS: PINS, BR
SUBJ: RELEASE OF TERRORIST INVOLVED IN KIDNAPPING OF AMBASSADOR
ELBRICK

REFS: (A) 76 BRASILIA 0742 (B) 76 STATE 309303

1. SUPREME MILITARY TRIBUNAL (STM) HAS FOLLOWED UP ON EMBASSY'S INITIAL APPROACH (REF A) REGARDING RELEASE OF CLAUDIO TORRES DA SILVA BY PROVIDING COMPLETE LISTING OF LEGAL ACTIONS AND APPEALS INVOLVING HIM FROM INITIAL CONVICTION IN 1970 UNTIL RELEASE IN SEPTEMBER 1976. ACCORDING TO THESE RECORDS, SILVA SERVED FULL SENTENCE AND WAS NOT RELEASED ON PAROLE AS PROSECUTOR-GENERAL INITIALLY SURMISED. RECORD SHOWS THAT SIX OF SEVEN YEARS SILVA SERVED REPRESENTED SENTENCE FOR "ATTEMPTED HOMICIDE," WHICH OTHER INFORMATION INDICATES IS BASED ON HIS SHOOTING AND WOUNDING OF A STATE MILITARY POLICEMAN. THE REMAINING ONE YEAR OF THE SEVEN-YEAR SENTENCE REPRESENTED SENTENCE UNDER 1967 NATIONAL SECURITY LAW FOR "VIOLATING IMMUNITIES OF A DIPLOMAT." MAXIMUM SENTENCE PROVIDED FOR THIS OFFENSE UNDER LAW THEN IN EFFECT WAS TWO YEARS, WHICH WAS INITIALLY GIVEN TO TORRES BUT WAS REDUCED TO ONE
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YEAR ON APPEAL IN 1971.

2. IN 1970 SILVA WAS ALSO CONVICTED OF SEPARATE CHARGE OF "KIDNAPPING" UNDER 1967 NATIONAL SECURITY ACT AND GIVEN SIX-YEAR SENTENCE. BUT IN 1972, FOLLOWING AN APPEAL, TORRES WAS ACQUITTED BY LOWER COURT-MARTIAL OF KIDNAPPING CHARGE, WHICH ACQUITTAL WHICH WAS ULTIMATELY

UPHELD BY STM IN 1972 ON GROUNDS OF "INSUFFICIENT EVIDENCE." SHOULD ALSO BE NOTED THAT EVEN SILVA'S SIX-YEAR SENTENCE FOR "ATTEMPTED HOMICIDE" WAS ULTIMATELY REDUCED TO THREE YEARS BY THE STM ON APPEAL, THOUGH STM DECISION BECAME FINAL TOO LATE TO EFFECTIVELY REDUCE TIME ACTUALLY SERVED.

3. WE NOTE THAT WHILE ENTIRE PROCEEDINGS WERE IN MILITARY TRIBUNALS, DUE PROCESS SEEMS TO HAVE BEEN RIGOROUSLY FOLLOWED. STM RULED ON 12 SEPARATE OCCASIONS BETWEEN 1970 AND 1975 ON SPECIAL MOTIONS OR APPEALS INVOLVING SILVA. BASIS FOR CHARGES AND SENTENCES WAS NATIONAL SECURITY AND MILITARY JUSTICE LEGISLATION IN EFFECT AT TIME OF 1969 INCIDENT RATHER THAN SOMEWHAT TOUGHER NATIONAL SECURITY LEGISLATION SUBSEQUENTLY ADOPTED. KEY POINT FOR OUR PURPOSES IS THAT STM FOUND INSUFFICIENT EVIDENTIAL BASIS FOR CHARGE THAT TORRES DA SILVA PLAYED DIRECT ROLE IN ACTUAL KIDNAPPING OF ELBRICK. (ACCORDING TO EMBASSY REPORTS DATING FROM THAT PERIOD TORRES DA SILVA'S INVOLVEMENT WAS NOT IN ACTUAL KIDNAPPING BUT IN SUBSEQUENT INTERROGATION OF ELBRICK WHILE IN CAPTIVITY.)

4. IN VIEW OF FOREGOING, WE ARE UNCERTAIN AS TO BASIS FOR OUR ASSERTION THAT BRAZILIAN MILITARY COURTS HAVE BEEN "LENIENT" OR OTHERWISE DEFICIENT IN THIS CASE. SENTENCES WERE BASED ON LAWS THEN IN EFFECT, WHICH WE NOTE ANTEDATED PERIOD OF HEIGHTENED PUBLIC AND INTERNATIONAL CONCERN OVER SAFETY OF DIPLOMATS, AND ON IMPORTANT QUESTIONS OF FACT WHICH

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COURTS REVIEWED METICULOUSLY. WE BELIEVE THAT IN OUR CONTACTS WITH PROSECUTOR-GENERAL OF THE STM AND SUBSEQUENT CONTACTS WITH HIS ASSISTANT WE HAVE ADEQUATELY MADE CLEAR THE US CONCERN FOR GENERAL PRINCIPLE OF RIGOROUS LEGAL ACTION AGAINST TERRORISTS, AND WE HAVE NO REASON TO BELIEVE BRAZILIAN GOVERNMENT DOES NOT SHARE THIS CONCERN. THEREFORE, UNLESS DEPARTMENT DECIDES OTHERWISE, WE PROPOSE TO TAKE NO FURTHER ACTION ON THIS CASE.
CRIMMINS

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: KIDNAPPING, PRISONERS RELEASE, AMBASSADORS
Control Number: n/a
Copy: SINGLE
Sent Date: 27-Jan-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977BRASIL00742
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D770030-0199
Format: TEL
From: BRASILIA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770114/aaaaalwc.tel
Line Count: 107
Litigation Code IDs:
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Litigation History:
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Office: ACTION MCT
Original Classification: CONFIDENTIAL
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Original Previous Classification: n/a
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Reference: 76 BRASILIA 742, 76 STATE 309303
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 30-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
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Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3489464
Secure: OPEN
Status: NATIVE
Subject: RELEASE OF TERRORIST INVOLVED IN KIDNAPPING OF AMBASSADOR ELBRICK
TAGS: PINS, BR, US, (ELBRICK)
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/28cf38d0-c288-dd11-92da-001cc4696bcc
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